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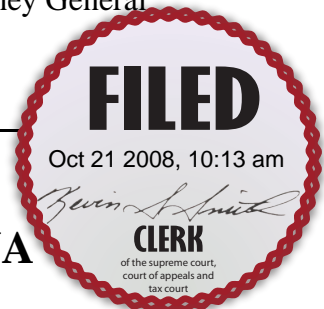
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**IN THE
COURT OF APPEALS OF INDIANA**



STEFAN SCOTT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0804-CR-224

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No. 49F18-0702-FD-32219

October 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Stefan Scott appeals his sentence for class D felony resisting law enforcement. We affirm.

Issues

- I. Did the trial court abuse its discretion by failing to award Scott credit for time served on pre-trial home detention?
- II. Did the trial court cite an improper aggravator and/or fail to cite mitigators supported by the record?
- III. Was his sentence inappropriate in light of the nature of the offense and his character?

Facts and Procedural History

On February 25, 2007, Scott fled from an Indianapolis Metropolitan Police Department officer after the officer had ordered him to pull over. The next day, Scott was charged with resisting law enforcement as a class D felony, criminal recklessness as a class A misdemeanor, driving while suspended with a prior as a class A misdemeanor, and reckless driving as a class B misdemeanor. On March 23, 2007, the trial court placed Scott on pre-trial home detention. He remained on home detention until December 2007, when he was arrested for and pled guilty to class D felony theft. On January 31, 2008, Scott pled guilty to resisting law enforcement as a class D felony. Pursuant to a plea agreement, the State agreed to dismiss all other charges, and the parties agreed that the sentence would be capped at two years executed. On March 13, 2008, the trial court sentenced Scott to 545 days for class D felony resisting law enforcement. He now appeals.

Discussion and Decision

I. Credit for Home Detention

Scott contends that the trial court erred by denying him credit for the time he served in pre-trial home detention. Generally, because pre-sentence jail time credit is a matter of statutory right, trial courts do not have discretion in awarding or denying such credit. *James v. State*, 872 N.E.2d 669, 671 (Ind. Ct. App. 2007). However, it is within the trial court's discretion to deny a defendant credit toward his sentence for time served in home detention. *Id.* at 672 (citing *Purcell v. State*, 721 N.E.2d 220, 224 n.6 (Ind. 1999)). We will reverse the trial court's decision only upon a showing of abuse of discretion. *Id.* at 671. An abuse of discretion occurs when the trial court's decision is against the logic and effect of facts and circumstances before the court. *Id.*

The written plea agreement entered into in this case does not contemplate credit for home detention. Directly above Scott's signature, the agreement states, "The agreement embodies the entire agreement between the parties and no promises have been made or inducements given to the defendant by the State which are not part of this written agreement." Appellant's App. at 41. Scott concedes this point but claims that comments of the judge, prosecutor, and defense counsel "suggest that the parties contemplated such credit would be given." Appellant's Br. at 5. The record shows that the trial court considered granting Scott credit time for his period of home detention until it discovered that Scott had committed theft during that time. The trial court stated:

[Scott] was given his freedom, told to behave. He goes out and commits another crime. And while he was given his freedom, you want me to give him credit for that. I can't do that.... I'm usually inclined to give [defendants] credit for [home detention]. But he just wiped it all off. So the decision I'm

making is that he can't have credit for the time he served in Home Detention as a condition of his Pre-Trial release.

Tr. at 30-31. In our view, the trial court was within its discretion to deny Scott's request for credit.

II. Aggravating/Mitigating Circumstances

Scott also claims that the trial court erred by citing an improper aggravated circumstance and no mitigating circumstances at sentencing. Sentencing decisions are reviewed on appeal only for abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). It is true that a trial court may abuse its discretion if the reasons it cites for imposing a particular sentence are not supported by the record or if it overlooks mitigating circumstances clearly supported by the record. *Id.* at 490-91. Scott's claim fails on both counts, however.

During the trial court's questioning, Scott confirmed that a state identification card issued to a Brian Walton had been "taken off [his] person" at the time of his arrest for theft in December 2007. Tr. at 13. The court also noted that the charging information in the theft case identified Scott as "Brian Walton also known as Stefan Scott[.]" *Id.* at 4. These portions of the record support the trial court's conclusion that Scott provided police with another person's identification. The court did not abuse its discretion by finding this to be an aggravating circumstance in determining Scott's sentence.¹

As for the issue of mitigating circumstances, Scott is correct that the trial court did not cite any. However, Scott has not argued any specific mitigators either before the trial

court or in his appellate brief. Consequently, we find no abuse of discretion.

III. Appropriateness of Sentence

Finally, Scott argues that his sentence is inappropriate in light of the nature of his offense and his character. According to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is upon Scott to persuade us that his sentence is inappropriate. *See Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. "We are required to exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decision." *Stewart v. State*, 866 N.E.2d 858, 865 (Ind. Ct. App. 2007).

Scott's argument is premised almost solely on his contention that he received an "aggravated" sentence. Appellant's Br. at 12. As the State points out, Scott received the advisory sentence of one and one-half years for a class D felony. *See* Ind. Code § 35-50-2-7(a). In short, Scott has failed to persuade us that his sentence is inappropriate.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.

¹ We note that Scott does not claim that the trial court abused its discretion by using evidence from his theft case as an aggravating circumstance in the instant case, so we need not address that issue.